Windsor Industries, Inc. *and* National Organization of Industrial Trade Unions. Cases 29-CA-7943 and 29-CA-8108

December 15, 1982

DECISION AND ORDER

On August 3, 1981, Administrative Law Judge Steven B. Fish issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Windsor Industries, Inc., Melville, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

DECISION

STATEMENT OF THE CASE

STEVEN B. FISH, Administrative Law Judge: Pursuant to charges and amended charges filed in Cases 29-CA-7943 and 29-CA-8108 by National Organization of Industrial Trade Unions, herein called the Union or the Charging Party, the Regional Director for Region 29 issued an order consolidating cases, consolidated amended complaint and notice of hearing on August 14, 1980.[1] The complaint alleges that Windsor Industries, Inc., herein called Respondent, violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended, herein called the Act, by, in substance, soliciting grievances of its employees and promising its employees benefits to induce them to abandon their membership in the Union, by laying off employees Joseph Benzola and Jack Roberts, because said employees joined and assisted the Union, and by refusing to recognize and bargain with the Union, as the exclusive representative of its employees in an appropriate unit.

The hearing was held before me on February 23-25, 1981, in Brooklyn, New York. During the course of the hearing, the General Counsel amended the complaint in various respects, more fully detailed below.

The General Counsel and counsel for Respondent argued orally at the close of the hearing. A brief has been received from Respondent. The General Counsel submitted a statement of position in lieu of a brief. These documents have been carefully considered. Upon consideration of the entire record, and my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a New York corporation with its place of business at Hub Drive, Melville, New York, is engaged in the importation and distribution of electronic products, such as radios, cassette tape recorders, digital clock radios, hair dryers, and high-intensity lamps. During the past year, Respondent purchased and caused to be delivered to its place of business electronic components, and other goods and materials, valued in excess of $50,000 directly from States of the United States other than New York. Respondent admits and I so find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. It is also admitted and I so find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. *Respondent's Operations*

Respondent's business consists solely of the importing and sale of various electrical products. No manufacturing

[1] All dates herein unless otherwise indicated refer to 1980.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge and asserts that the Administrative Law Judge manifested bias toward it in discrediting much of the testimony of Vice President David Fink. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings. We also find totally without merit Respondent's allegation of bias on the part of the Administrative Law Judge. Upon our full consideration of the record, we perceive no evidence that the Administrative Law Judge prejudged the case or demonstrated a bias against Respondent in his analysis or discussion of the evidence.

While the Administrative Law Judge's detailed findings faithfully reflect the evidence contained in the record herein in all essential respects, Respondent's exceptions correctly specify certain inaccuracies, each of a minor nature insufficient to warrant a different result from that reached by him in this proceeding. Thus, in fn. 17, the Administrative Law Judge finds that Union Business Representative Jones handed employee Roberts an authorization card, whereas the evidence indicates that it was either Jones or Union Vice President Hustick who delivered the card to Roberts. Further, in sec. II,D, par. 14, and fn. 34, the Administrative Law Judge erroneously attributes certain testimony to employee D'Onofrio indicating that the work formerly performed by Benzola and Roberts was thereafter performed, in part, by Supervisor Pat Carrington. While the record contains testimony indicating that Carrington performed such work, this testimony was offered not by D'Onofrio, but rather by Respondent's witness Ann Mileto.

[2] We agree with the Administrative Law Judge that Respondent's warehouse employees, excluding its technicians, constitute an appropriate collective-bargaining unit herein and that the Union had obtained valid authorization cards from a majority of employees therein. Accordingly, we find it unnecessary to pass on the Administrative Law Judge's findings and conclusions with respect to the validity of the authorization card of employee Al Reph, Jr., inasmuch as Respondent had secured valid cards from a majority of unit employees, apart from Al Reph, Jr.'s card.

[3] Chairman Van de Water and Member Hunter do not agree that Respondent's unlawful conduct was so pervasive and likely to have a lingering impact that a fair election could not be held once Respondent has complied with the Board's traditional remedies. For this reason, they decline to join in that portion of the Order which directs Respondent to bargain with the Union.

is performed by Respondent. Its facility in Melville is essentially a warehouse and office consisting of approximately 20,000 total square feet. The warehouse consists of a shipping and receiving area or department, and a repair area or department as well as a large area where Respondent's merchandise is stored.

Respondent's employees perform functions associated with two different types of merchandise. Respondent's income comes from its importing new items, and in turn shipping them out to customers. The new merchandise is received at Respondent's warehouse in sealed container shipments. It is unloaded by Respondent's shipping and receiving employees, under the supervision of Warehouse Supervisor Nicholas Cianflone.[2] In April 1980, employees Matthew Peck and Al Reph performed this work on a regular basis, and were assisted by other warehouse employees such as Jack Roberts, Joseph Benzola, or Steve DeStefano, when necessary.

Once unloaded, the cartons containing the new items are noted in Respondent's records and taken by forklift or handtruck, and stored in the warehouse, primarily by Reph and Peck.

When an order comes in, a label is sent out from the office with the order, and Reph and Peck would "pull" the order from stock. Peck and Reph, assisted on occasion by employee Madeline D'Onofrio, apply the shipping labels or stencils to the boxes. The order is then moved to the loading area and eventually loaded onto a truck for delivery to a customer.

In addition to importing and in turn selling new merchandise to customers, Respondent also utilizes a number of its employees in connection with performing work on old or defective merchandise which it receives. These employees worked in April 1980 under the supervision of Pat Carrington,[3] in what is loosely defined as the repair department.[4]

Defective merchandise is received by Respondent either from the retail stores from which they were purchased by the consumers, or directly from the individual retail customer. These items are shipped usually from United Parcel Service (UPS), and on occasion in 8 or 10 carton lots from a major retail store or other customer of Respondent. These items are unloaded by Reph or Peck, or by Benzola, Roberts, or DeStefano. The latter three employees would then move the merchandise from the shipping and receiving area to the repair area, unpack the cartons, and check and count the items, which would then be entered into Respondent's books.[5] Benzola, Roberts, and DeStefano would then place the unpacked items in large master cartons to be stored on shelves until the technicians are ready to repair them.

When the technicians are ready for particular items, various employees will bring the merchandise into the technicians' room for repair.[6] When the technicians are finished repairing the merchandise, the various employees who bring the merchandise into the technicians room will also bring out the items completed.[7]

The items are then placed on worktables, where various employees then will test the items,[8] clean them with alcohol, place them in cellophane bags, and repack the merchandise into small individual gift boxes. These gift boxes are then piled up on a table.[9] Roberts, Benzola, or DeStefano[10] would then pack the individual gift boxes into larger cartons and either bring them back to shipping to be sent out or place them on the shelves to be shipped at a later time.

Where items are returned from individuals to Respondent, they generally receive priority treatment, and are immediately worked on and shipped back to the individual by UPS. The procedure for individual returns is similar to that of returns from large customers of Respondent, as outlined above. When the returns to individuals or stores are shipped out they are labeled, entered into Respondent's records, and postage is affixed in the shipping area by either Reph or D'Onofrio and sent out generally by UPS.

As noted, the technicians engage in the actual repair of the returned items. They work segregated from the other warehouse employees, in an enclosed room.[11]

The technicians regularly use tools such as soldering irons, screwdrivers, pliers, and meters in performing their duties, while other warehouse employees do not. The only regular contact between the technicians and the other warehouse employees is, as noted above, when the items are brought in and out of the technician's room by the other employees.

Carrington, the supervisor in charge of other employees engaged in working on defective merchandise, is also in charge of supervising the technicians.

The other warehouse employees punch a timeclock and are paid salaries ranging from $3.50 per hour to $5

[2] Although Cianflone is the overall warehouse supervisor, he has particular responsibility for the shipping and receiving area and the employees primarily assigned there. David Fink is Respondent's vice president in charge of operations and Mickey Hiller is its vice president in charge of sales. It is stipulated that all three of these individuals are supervisors and agents of Respondent within the meaning of Sec. 2(11) of the Act.

[3] Carrington is also stipulated to be a statutory supervisor.

[4] There is no separate, defined, or walled-in section of the plant known as the repair department. Many of the employees who work under Carrington perform jobs primarily associated with defective merchandise work in various sections of the warehouse. However, most of the employees are stationed primarily in areas fairly close to the enclosed repair room where the technicians perform the actual repairs of the products.

[5] Employee Debra Curley was primarily assigned to entering the items into Respondent's books.

[6] For instance, if the technicians are working on AM-FM radios, the employees will bring in a carton of AM-FM radios to be repaired.

[7] Employees Ann Mileto and Claire Franco were the employees who performed the tasks of bringing in and removing merchandise from the technicians' room on a regular basis. On occasion other employees such as Benzola would also perform these tasks.

[8] Testing, which usually involves radios, consists of putting in batteries and seeing if the radios play, and inspecting the radios to see if they are in decent enough shape to be sent out.

[9] Some or all of these job functions were performed by employees Sharon Albert, Lucy Bolte, Teresa Perez, Mildred Reph, Rosario Rodriguez, and Carmella Lombardo, in addition to Mileto and Franco.

[10] Benzola, Roberts, and DeStefano also perform the various maintenance tasks as required, such as sweeping the floors and taking out the garbage.

[11] Respondent employs three technicians, Harry Yip, Nathan Heimer, and Yung Kwong Wong. In addition, working alongside these three technicians are three individuals, who are employees of and are paid by Respondent's suppliers, and who perform essentially the same work as Respondent's technicians.

per hour. The technicians do not punch a timeclock, and are paid on a daily basis of from $50 to $70 per day.

There is no permanent or temporary interchange of job functions between technicians and other warehouse employees. There is, however, both permanent and temporary interchange between job functions of the other warehouse employees.[12]

Ann Mileto, whom the General Counsel claims to be a supervisor of Respondent, was employed in April 1980 as a packer and tester and performed essentially these functions. She punched a timeclock, and is under the supervision of Carrington.

Mileto has no role in the hiring or firing of employees, nor is she involved in raises, promotions, layoffs, or recalls. Her alleged supervisory responsibility, according to the General Counsel, stems from her assignment of work to employees and her allegedly being accountable for the work of the employees in her area.

The record reveals that Mileto does give assignments to five or six other employees in her area concerning which radios or other items to work on, and does tell employees to stop working on one job and start another. However, the record also establishes that these orders and assignments are merely transmitted by Mileto from Carrington, Cianflone, or Fink, and that Mileto herself exercises no judgment, independent or otherwise, in making these assignments or changes in work priorities. The record also reflects that Cianflone once or twice a week asked Mileto how the employees were performing in her area. She would give generalized answers as to the general work performance of the employees. The record reveals that there have been no discussions between Mileto and Cianflone or any other management official concerning the work performance of any specific employee, and that Mileto has made no recommendations affecting the employment status of any of Respondent's employees.

B. *The Union's Organizing Campaign*

On April 7, Union Business Representative Girard Jones and Executive Vice President Gerald Hustick appeared in the parking lot of Respondent's premises, and began speaking to employees during their lunch hour. They spoke to Joseph Benzola first, told him that they were interested in organizing the shop, and asked him to fill out an authorization card for the Union, which he did at that time.

The card reads as follows:

> I hereby authorize N.O.I.T.U. to represent me and, in my behalf, to negotiate and conclude all agreements as to hours of labor, wages, and other employment conditions.

During the course of that same day, and the next day, April 8, Jones and Hustick obtained signed authorization cards from employees Matthew Peck, Rosario Rodriguez, Teresa Perez, Lucy Bolte, Steven DeStefano, Jack Roberts, and Debra Curley. Jones informed these employees of the benefits of union membership, such as Blue Cross/Blue Shield, life insurance, prescription programs, and other benefits. He told the employees that these benefits were offered to members, and that, when the Union gets a contract with an employer, these are the benefits that are in the contract.[13]

With respect to the cards of Roberts and Curley, Jones and Hustick approached them in Curley's car and handed them authorization cards. The union officials introduced themselves, and said that they were interested in helping to organize the shop. Jones asked what the employees thought about having Respondent organized and how they feel about being part of a union. Both Roberts and Curley replied that it would be a good idea and that they would "fill out and do anything possible to help them organize the shop in the following months." Jones instructed them to examine the card thoroughly, fill it out, and sign it. Both Curley and Roberts read the cards, filled them out, and signed them. Roberts then asked Jones what the cards would be used for. Jones replied that they would be "used to get enough votes for a closed ballot election." Roberts and Curley then handed their signed cards to Jones.

The Union also obtained authorization cards dated April 8, bearing signatures reading Mildred Reph and Al Reph, Jr. On April 7, Jones spoke to Mildred Reph about signing a card for the Union. He gave her a card to sign and she asked Jones for an extra card for her son, who was out that day, to sign. Jones gave her the extra card as requested.

On or about April 9, in the warehouse, Benzola approached Mildred Reph, and asked her if she had signed her card and if she had the card signed by her son Al. She replied that she had her signed card, as well as the card signed by her son. She told Benzola that Al was not coming in for a couple of days, and added that Al had signed his authorization card. Benzola asked her to give him the cards, since Jones had asked him to collect cards from the workers. She said fine and gave Benzola both cards, who in turn gave them to Jones.[14]

Benzola, in addition to asking for and obtaining the cards from Mildred Reph as noted above, also discussed the Union with a number of other employees in the warehouse. He spoke to Madeline D'Onofrio on April 7 and told her that he had been speaking to a business representative from the Union, and added that he thought it was a good idea to organize. D'Onofrio replied that she

[12] For example, Benzola, Roberts, and DeStefano help load and unload trucks, as well as packing and unpacking in the repair area. Peck and Reph bring defective merchandise to the repair area as do other repair area employees. D'Onofrio, who was formerly assigned to testing, unpacking, and boxing work in the repair area, was transferred to the shipping and receiving department to work primarily with Reph and Peck.

[13] The above cards were authenticated by Jones or other witnesses, who either observed the cards being signed by the signer or received the cards directly from or in the presence of the signers.

[14] The above is based on the credited and unrefuted testimony of Jones and Benzola. Neither Mildred nor Al Reph, Jr., was called to testify by any party. The record revealed that both were still employed by Respondent at the time of the instant hearing. Neither the General Counsel, the Charging Party, nor Respondent made any indication that they had attempted to subpoena either of these witnesses. Similarly no W–4 forms or other records showing the signature of Al Reph were introduced by any party, nor does the record reveal whether the General Counsel or the Charging Party attempted to subpoena such documents from Respondent.

was involved with a union some years ago, and she was laid off and that she did not think too highly of unions.

On April 9, Benzola spoke to two or three of the technicians at different times in the technicians' room.[15] He handed them authorization cards, and asked them to sign. They told him that they would see or think it over, or that they would not sign the cards unless Pat and Nick signed cards. Benzola told them that Pat and Nick could not sign the cards. None of the technicians ever executed any authorization cards for the Union.

Roberts discussed the Union with employee DeStefano on April 7 or 8, in a car going home, and they both said that they thought it was a good idea to go with the Union.

The next day or so, Roberts, in the warehouse, asked employee Matthew Peck if he thought the Union would be a good idea, and Peck agreed with Roberts that it was a good idea.

On or about April 10, Roberts spoke to employee Sharon Albert in her work area in the warehouse. He asked what she thought about having an election at Windsor, and she replied that since she was part time she was afraid of losing her job and was undecided. Roberts told her the Union was a good idea for benefits, raises, and job security. He gave her an authorization card and told her that they needed a certain amount of signatures to have a vote. He asked Albert to take the card, think about it, and give it back to him. She accepted the card and the conversation ended. A few days later Albert returned a signed card to Roberts and said that she wanted to vote and that the Union was a good idea. Roberts subsequently gave the card to Jones.[16]

The evidence did not establish that any supervisors of Respondent were present during any of the above-described incidents involving union activity of either Roberts or Benzola.

However, the blank card that Roberts gave to Albert was given to him by Jones or Hustick in the parking lot of Respondent's premises. At the time, Hiller was standing inside the warehouse, looking out toward them through the opened bay doors.[17]

On a number of other occasions, from April 7 to April 10, Hiller observed Roberts, Benzola, and most of the other of Respondent's employees either in groups or individually talking to Jones and Hustick outside Respondent's premises, either on lunch or breaktime. However, Benzola and Roberts were the two employees who spoke to Hustick and Jones most frequently.[18]

Sometime in the morning of April 10, Respondent received a telegram from the Union, reading as follows:

> The National Organization of Industrial Trade Unions has signed a majority of your employees. We seek immediate recognition. Your prompt response is of paramount importance.

According to David Fink, this telegram was the first knowledge that he had about any union activity at his premises. Fink upon receipt of this telegram immediately called his attorney, Alan Pearl, and informed him of same. Pearl then met with Fink and asked him if he thought the Union had a majority as they alleged in the telegram. Fink replied that he had no idea. He and Pearl then went over the list of Respondent's employees, and Fink ventured a guess as to which employees he thought would be likely to support the Union. Pearl made notes of Fink's guesses on a piece of paper. This procedure resulted in Fink speculating that about half of his employees signed and half did not sign for the Union. With respect to Benzola and Roberts, Fink felt that since they were both new employees, he supposed that they signed cards.[19]

C. *The April 11 Meeting*

At or around 11 a.m. on April 11, a number of Respondent's employees[20] were together in their work area. Reph stated that she would like to talk to David Fink and tell him what benefits the employees would like. The group then decided to request a meeting with Fink for this purpose. Mileto then went into Fink's office and told him that the employees wanted to have a meeting with him and talk to him to find out if they could get raises or other benefits from him. Fink replied, "okay," he would meet with the employees in the afternoon after break. He told Mileto that whichever employees had grievances could attend the meeting and he would meet with them. In the early afternoon most of Respondent's employees were informed by Mileto that there was going to be a meeting in the afternoon in the warehouse. Roberts was informed about the meeting by Carrington, who told Roberts that there was going to be a meeting, and that management wanted to talk to the employees about the Union and about what the employee's complaints and gripes were.

The meeting began at 3:40 p.m. Present were Fink, Carrington, and Hiller and employees D'Onofrio, Mileto,

[15] Benzola had previously discussed the technicians with Jones. Jones told Benzola that he felt the Union had a majority but Benzola replied that he (Benzola) had not talked to the technicians as yet. Jones asked Benzola if the technicians punched a timecard and Benzola, after checking, informed Jones that they did not. Jones then stated that he did not think it was necessary to get cards from the technicians, but that it would be a good idea to have the majority of technician's votes anyway. Accordingly, Benzola attempted to solicit authorization cards from the technicians.

[16] The above is based on the uncontradicted testimony of Roberts. The card allegedly signed by Albert was not introduced into the record by the General Counsel, and the General Counsel disclaimed any contention that Albert's alleged signed card should be counted in determining the Union's majority status.

[17] In the absence of a denial from Hiller, who did not testify, I find the above evidence, based on Roberts' uncontradicted testimony, sufficient to infer that Hiller observed Jones handing Roberts an authorization card. *Riverfront Restaurant, a Corporation Trading as Riverfront Restaurant & Dinner Theatre*, 235 NLRB 319 (1978).

[18] The above findings are based on Roberts' credited undenied testimony.

[19] The above findings are based on Fink's own testimony. Fink testified that his figuring as to who signed cards was consistent with the cards submitted by the Union, except for the card of Matthew Peck. Fink testified that he did not think Peck would go with the Union as he figured that Peck "was a strong company man." Fink also testified that he thought Al Reph, Jr., and his mother would go with the Union.

[20] Mildred Reph, Teresa Perez, Carmella Lombardo, Lucy Bolte, Claire Franco, and Ann Mileto.

Franco, Bolte, Lombardo, Perez, Rodriguez, Benzola, Peck, Roberts, DeStefano, and Mildred Reph.[21]

Prior to the management representatives appearing at the meeting, the employees got together and made up a list of grievances to present to Fink. A number of different employees wrote down various items on a piece of paper which was passed around. Benzola wound up with the paper in his possession. Prior to Benzola receiving the document, other employees had written the following items: "periodic raises, benefits, sick days, 45 minutes on Friday for lunch, some place to cash the check. Definite holidays to be known."

Benzola then wrote, "medical plan, eye care, dental plan, Blue Cross and Blue Shield, personal days."

When Fink, Hiller, and Carrington arrived at the meeting, Fink began by reading from five 3 by 5 cards that he had been given by his attorney prior to the meeting. My findings of fact set forth below concerning the events of the meeting are derived primarily from these cards, as well as Fink's summary of the meeting which he prepared immediately after the conclusion of the meeting, and supplemented by the credited testimony of Fink and some of the other witnesses.

Fink's opening remarks were as follows:

> At your request we are holding this meeting, but first there are certain ground rules. First, let me say that I have been advised that based on law, I cannot threaten you for union activities, as long as you do your work. Second, I cannot promise you any benefits to try and sway you nor can I ask what is wrong. Okay, with this understanding let's proceed. Remember I have always had an open door. Anyone could have seen me, and discussed anything with me, I am back here a dozen times a day.
>
> My view is that I do not want a third party to come between us. First I don't think you need outside representation, or why you should pay for outside representation. You might be worried about your job, don't be. There will be no reprisals. I just want you to know what you are getting into.

Benzola then stated that he had a list of benefits that the employees would like, and he proceeded to read the list of benefits, as set forth above. Fink responded that he could not promise anything. At that point a number of the specific benefits mentioned were brought up by various employees, including Mildred Reph, D'Onofrio, Benzola, and Roberts. D'Onofrio began to write down a list of the benefits requested as they were being specifically discussed.[22] Raises were brought up by Reph, who complained that another enployee had received a raise. Fink replied that the other employee had asked for it. One of the employees mentioned a 45-minute lunchbreak on Friday, thereby enabling employees to have an extra 15 minutes to cash their checks. Fink replied that that sounded reasonable, and he would look into it.

Benzola then brought up the subject of medical benefits, saying that it would be a good policy to have some sort of Blue Cross and Blue Shield plan, including benefits such as eye care and a dental plan. Fink answered that he would look into these benefits. However, he added specifically addressing himself to Benzola that it would not be worth it to cover Benzola for these benefits, since Benzola was going back to school in September and it would be a waste of money to cover someone who was going back to school so shortly.

Benzola then said that there should be a distinction between personal days and sick days, and Fink responded that there should not be. A number of benefits were raised throughout the meeting by various employees, such as vacation, raises, and sick days. The response from either Fink or Hiller when these benefits were requested by employees was identical. They stated that these items would be looked into, but that no promises could be made.

Jack Roberts brought up the fact that he was unaware of the holidays that Respondent's employees receive. Roberts requested that management post a calendar at the timeclock, listing Respondent's holidays. Hiller replied that this was a reasonable request and that he would take care of it.[23]

At the close of the meeting, Benzola handed Fink the list of grievances that he had in his possession and D'Onofrio handed Fink the list that she had prepared during the course of the meeting.[24] When D'Onofrio gave the list to Fink, she stated that "this is what we want." Fink replied that he would accept the lists and would look into the requests made, but repeated that he could make no promises.

Other than the posting of the holidays, as set forth above, none of the other benefits discussed at the meeting was instituted by Respondent.

With respect to the two lists given to Fink by Benzola and D'Onofrio, Fink testified as follows:

> Q. At that point the various women made various complaints?
>
> A. The one thing I figured right then why even the women, to remark on Joe's list, was he had some things listed there that were like pie in the sky. Like dental plan, eye plan I was more speechless from that than from anything else.
>
> Q. Speechless from what?

[21] None of the technicians was present at the meeting. The record does not establish whether or not the technicians were informed of the meeting or whether they were invited to attend.

[22] Hiller, early in the meeting, told the employees that if they have grievances, they should write everything on a piece of paper. This finding is based on Mileto's undenied testimony.

[23] The following Monday, a list was posted at the timeclock, entitled "Holidays for 1980," enumerating six holidays that Respondent's employees receive with pay. The list included no additional holidays that Respondent's employees were not given in the past.

[24] This list mentions that benefits would be looked into, and that, on holidays, a notice would be put up. The list refers to sick days and personal days and next to it are the words "work on." On vacations, the list reads "check on." Since D'Onofrio could not recall why she wrote these words, or whether in fact they were used by anyone at the meeting, and no other witnesses recalled such comments, I do not find that Fink or any other management representatives said that they would "work on" or "check on," any benefits. As noted, I have found as set forth above that both Fink and Hiller repeatedly stated that they would "look into" the various benefits requested by the employees.

A. Some of his benefits that even if I wanted to I wouldn't have made a discussion about it. We're talking about a $3.50 an hour employee. Dental plans and eye plans? We don't have it in the office, we don't have it anywhere. It's like he opened a book and just wrote it down.

I didn't want to hold a discussion about it. I just right said I cannot promise anything and that was that. And that's why I think on the girl's list, comparing the two, they didn't have these kind of benefits written down.

Later on in his testimony, Fink was asked to clarify the above comments:

Q. I'm a little unclear about your testimony before about the difference between the two lists, Joe's list was one thing and the other employees' list was another?

A. I took the lists back to the office and before I stuck the list away I went over it. And I see, even when he was reading it off, the dental plan, the eye plan, that it was items that, when the girls were discussing, wasn't in the things that they put down. It was pie in the sky, that's just my impression.

Q. You felt that his requests were totally unreasonable?

A. Totally.

It is undisputed that Respondent had never held a meeting in the past, in any way similar to the meeting described above.

After the meeting ended, Benzola punched out and left Respondent's premises. He approached Hustick who was waiting near his car, outside the parking lot. He spoke to Hustick and informed him of the meeting and what Fink had said to the employees. While he was speaking to Hustick, there were no other employees present. During the course of this conversation, Benzola observed Fink, Hiller, Cianflone, and Carrington looking out from inside the plant toward Hustick and Benzola, about 30–50 feet from where Hustick and Benzola had their discussion.

Based on the above testimony which I credit, and particularly in the absence of denials from Respondent's witnesses,[25] I conclude that Respondent's officials did observe Benzola speaking to Hustick after the April 11 meeting. See *Riverfront Theatre, supra.*

D. *The Layoffs of Benzola and Roberts*

Benzola and employee DeStefano were both hired by Respondent on February 1. Roberts was hired on February 4. These three employees were primarily assigned to work under Carrington's direct supervision, working with defective merchandise. They would assist in unloading and loading this merchandise from and onto trucks in the shipping area, transfer the items throughout various areas of the warehouse, as well as packing, unpacking, and labeling this merchandise. They also would from time to time assist in loading and unloading trucks of new merchandise, working with Peck and Reph in this aspect of their work. They also as noted performed whatever maintenance tasks, such as sweeping up and taking out the garbage, that were required. A fourth employee, Thomas Meichtry, who was hired on February 4 and quit sometime during the week ending April 4, performed similar work, along with Benzola, Roberts, and DeStefano.

Respondent also had between the period of October 15, 1979, and January 16, 1980, hired four employees, who also performed similar work for Respondent.[26]

On April 15, at the end of the workday, Roberts and Benzola were both informed by Nick Cianflone that work was slow and that they were being laid off until further notice, or until work picked up again. Roberts asked how long the layoff would last and Cianflone replied that he did not know.

On April 17, the Union filed a charge in Case 29-CA-7943, alleging that Respondent discharged Roberts and Benzola because of their membership in and activities on behalf of the Union, in violation of Section 8(a)(1) and (3) of the Act. On April 29, the Union filed an amended charge, alleging violation of Section 8(a)(1), (3), and (5) of the Act.

A letter dated May 29 was sent by Respondent to and subsequently received by Benzola requesting that he report to work on June 4. Benzola did not report to work or respond in any way to the letter. A letter dated June 4 was sent to Roberts requesting that he report to work on June 9; Roberts reported to work as requested.[27]

The initial complaint in the instant matter was issued on June 4. On June 23, the charge in Case 29-CA-8108 was filed, resulting in an order consolidating cases and consolidated amended complaint issued on August 14.

It was admitted by Fink and I find that Respondent had never laid off any employees in the past, prior to its decision to lay off Benzola and Roberts.

Fink testified that he made the decision to lay them off on his own without consulting any other supervisors, or examining any company records. He testified that he noticed from the beginning of April that there was insufficient work available to warrant retaining Benzola and Roberts. He contends that whenever he would look into the warehouse they would either be sweeping up, moving skids around, taking out the garbage, rearranging

[25] Neither Cianflone, Hiller, nor Carrington testified. Fink when asked if he saw Benzola talking to Hustick in the lot, after the meeting, replied, "I doubt it very, very much." Even if this, taken in conjunction with Fink's further testimony that he never saw Hustick or Jones prior to the hearing, can be considered a denial of his observing the incident, I do not credit Fink. In view of the unrebutted testimony that Jones and Hustick were outside the plant regularly talking to Respondent's employees, I find it inconceivable that Fink would not have observed them doing so.

[26] These employees and their dates of hire and terminations were as follows:

(1) Steven Austin—hired October 14, 1979—left the week of January 25, 1980.

(2) Ronald Moresco—hired January 21—worked 16 hours (2 days) and left January 23.

(3) Richard Harnoski—hired January 16—left the week ending February 22.

(4) Richard Bunt—hired January 8—left the week ending January 18. Worked two full weeks.

[27] Neither General Counsel nor the Charging Party contest the validity of Respondent's reinstatement or recall offers to Benzola or Roberts.

boxes, or performing other types of "make work" type of functions. Fink further testified that on April 7 he decided that it was necessary to lay them off. He allegedly informed Cianflone that there was no work and instructed him to lay them off at the end of the week.[28]

Cianflone allegedly replied O.K.[29] Then on April 10, Fink received the Union's demand for recognition. While speaking to his attorney, after discussing said demand, Fink contends that he mentioned that he was contemplating laying off two men. His attorney allegedly replied that he would be looking for trouble or taking a chance if he did so. Fink therefore allegedly informed Cianflone to hold off laying off the men. Fink also testified that Friday, April 11, the day that the layoffs were allegedly originally scheduled to be effectuated, was a busy day, and was the same day of the meeting with the employees, and Cianflone was not at work on that day.[30]

Fink further testified that on the next working day, Monday, April 14, he again looked around the warehouse and observed more brooms working and more garbage being taken out by the men, and on Tuesday, April 15, again observed Benzola and Roberts having nothing to do except for "make work." Accordingly, he asserts that he called his attorney, and said that he had to lay off these people. His attorney replied that it was his business and to do what he thought best. He then allegedly instructed Cianflone to lay off the last two people hired.[31]

With respect to Fink's testimony that there was literally nothing to do other than "make work," for Roberts and Benzola during the last week or two prior to their layoff, both Roberts and Benzola contend that although work was slow, and there was not as much work coming in as before, there was sufficient work for them to perform for most of the day. Madeline D'Onofrio, Respondent's own witness, corroborated Benzola and Roberts, in this respect, by testifying that work started to lag off for Benzola and Roberts by 4 p.m. each day, at which time Respondent would try to "make jobs for them."

In this connection Fink also testified, and is corroborated by the testimony of other employees, that the work that Roberts and Benzola were primarily assigned to perform, i.e., working with returned or defective merchandise, comes in most frequently during the months of January, February, and March of each year.[32] By the month of April, the amount of returned pieces to Respondent had diminished substantially from the month of January.[33]

As noted above, when Fink made his decision to lay off Benzola and Roberts, he did not check any records or ask either Cianflone or Carrington, the supervisors directly in charge of their work, whether there was sufficient work for them to perform. Fink contends that he was able to observe himself that there was not enough work for them, and that whatever work there was could be performed by other employees. According to Fink, the slow period in 1980 was not any more substantial than in prior years. In explanation of why he never laid off any employees in prior years, he alleges that he did not have to in view of the huge turnover in these positions in past years. He points out that the employees generally hired for this work making $3.50 per hour are frequently college kids seeking extra money and usually do not stay long. Other employees' testimony tends to corroborate Fink that there is usually a large turnover with respect to employees performing this work. In this connection, as noted above, Respondent introduced payroll records of four employees who were hired and left Respondent's employ between October 1979 and February 1980 who did the same work as Benzola and Roberts. However, Respondent introduced no records indicating the number or types of employees which it employed in 1979 or in any prior years. In fact, except for the generalized testimony set forth above of high turnover in this job, Respondent introduced no testimony, from Fink or otherwise, as to the number of employees employed by Respondent in prior years during any periods of time, including the March-April periods when work for employees such as Roberts and Benzola generally had substantially decreased.

After Benzola and Roberts were laid off, their jobs were performed by employee Peck and by Supervisor Pat Carrington.[34] According to Fink, work was so slow in the plant that employee Steve DeStefano left 2 weeks after the layoff of Roberts and Benzola, and it was not even necessary to replace him with any new employee.[35] Fink further testified that he decided to call back the employees because Respondent was expecting some heavy trucks,[36] and needed some extra help, since Al Reph was out of work due to an accident, and Peck could not handle the work himself.[37] Thus, Benzola was asked to

[28] Fink testified that Respondent usually waits until the end of the week on Friday, when employees get paid, to terminate them.

[29] Cianflone did not testify.

[30] According to Fink, he did not care to be the one to inform the employees of the decision to lay them off and that he preferred that Cianflone "do the dirty work."

[31] Roberts was the least senior employee. Benzola and DeStefano were hired on the same date, February 1. No explanation was given by Respondent as to why Benzola was chosen to be laid off rather than DeStefano. DeStefano was also a card signer for the Union.

[32] Thus, most of the returned merchandise consists of items either returned to Respondent from stores or directly from consumers, which were received during the Christmas gift-buying season.

[33] The General Counsel introduced into evidence a document presented during the course of the investigation by Respondent to the Regional Office. The document lists figures for 5 months in 1979 and 3 months in 1980, purportedly showing the number of returned pieces received by Respondent during these months. Fink testified that some of these figures were inaccurate in that they really reflect the date credit was given to the customer rather than the month the items were received by Respondent. In any event the document does tend to corroborate Fink's testimony that Respondent's returns did decrease substantially from January through April in both years. The document also shows that approximately the same number of pieces were returned during the relevant periods in 1979 and in 1980.

[34] Based on the testimony of Respondent's own witness, D'Onofrio.

[35] The payroll records for DeStefano introduced into the record show that he was on Respondent's payroll from February 1 to July 25, 1980.

[36] Apparently referring to new merchandise coming in. The busy season for new merchandise differs substantially from that of returns in Respondent's operations. Thus, the peak season for new merchandise begins in April and lasts through November, so that the merchandise can be shipped to stores for sales in the summer and for Christmas.

[37] Respondent's payroll records indicate that Reph was out of work from April 11 to July 11.

come back first, since he was senior to Roberts and, when Benzola did not respond to Respondent's offer, Roberts was recalled and he accepted. It is undisputed that no new employees were hired by Respondent between the layoffs of Roberts and Benzola and Respondent's efforts to recall Benzola on May 29.

E. *The May 9 Meeting*

Sometime in early May, some of the employees began talking among themselves, stating that the Union had not been around and they discussed requesting a meeting with Fink to see if they could settle things with him without the Union. Mileto agreed to ask Fink about such a meeting. She then went to Fink and asked if the employees could have a meeting with him. Fink testified that although he was not inclined to agree to meet with his employees again,[38] he told Mileto that he would meet with the employees if they presented him a petition that they were requesting the meeting. Mileto then went back to the employees, and wrote on the top of a piece of paper, "We are asking for a meeting with David Fink." This petition was then signed by employees Rodriguez, Mildred Reph, Perez, Bolte, Lombardo, and DeStefano. Mileto then presented the petition to Fink and he informed her to let the employees come into his office. At 11:23 a.m., the above employees, plus employees Peck and D'Onofrio, met in Fink's office with David Fink, Nick Cianflone, and Morris Fink. Mildred Reph began by asking Fink what was happening with the Union, adding that the Union had not been around and she could not contact them. Fink replied that he could not help her and told her that if she had a question to call up the Union.

Reph then stated that the employees would like to talk to Fink, "to see if you can give us anything without the Union. Maybe we can settle without the Union." David Fink replied that he could not do anything, that he was under "jurisdiction."[39] Reph continued by asking if they could get more money, more sick days, more vacation days, and more holidays without the Union, and added that if they get that they would not bother with the Union. Fink responded that he could not do anything, and his hands were tied. The meeting ended and the employees returned to work.[40]

III. ANALYSIS

A. *Respondent's Meetings With Employees*

It is well settled that where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns, there is a "compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries."[41]

However, the Board has also held that it is not the solicitation of grievances itself that is coercive and unlawful, but the promise either expressed or implied to correct such grievances. The solicitation of grievances merely raises an inference of such a promise, which can be rebutted by the employer. *Uarco Incorporated*, 216 NLRB 1 (1974).

Respondent argues that the statements made by Fink throughout the meeting that he could make no promises are sufficient to rebut the "compelling inference" of an implied promise to remedy the grievances raised by the employees. I do not agree.

The Board has held in numerous cases, subsequent to *Uarco, supra*, that an employer merely by reiterating repeatedly that he cannot make any promises does not rebut such a "compelling inference," where he had made other comments not in accord with its disavowal of promises.[42]

Respondent has herein, in my judgment, made such additional remarks which imply that it was impliedly promising to remedy its employees' grievances notwithstanding its "no promises" statements. Thus, Fink and/or Hiller repeatedly replied to its employees that it would "look into" the various benefits requested and complaints expressed by its employees.[43]

When an employee asked for an extra 15 minutes for lunch on Fridays, Fink went further by stating that this request "seemed reasonable," as well as promising to "look into" the matter. With respect to Roberts' request that a list of holidays be posted, Respondent agreed to do so, and in fact posted such a list the next working day.

Thus Respondent's actions suggested to employees that its listening to their gripes was not without purpose. By immediately attending to this complaint voiced by its employees, such anticipation was to some extent realized.[44] Although it is true as pointed out by Respondent that no new holidays were added, the employees had expressed a desire to be informed of the holidays to which they were entitled.[45] Although this benefit as well as the extra 15 minutes on Fridays, which Fink characterized as reasonable," may seem modest, these matters were important to the employees, and these actual and promised changes showed employees that they would not need a union to effectuate alterations in their working conditions.[46]

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[38] He had been served with charges and amended charges dated April 17 and 29, respectively.

[39] Presumably referring to the NLRB charges.

[40] The above recitation of facts as to the events leading up to and transpiring during the course of the May 9 meeting is based on a composite of what I consider to be the more credible, reliable, and logical portions of the testimony of Mileto and Fink (both witnesses of Respondent), the only witnesses who testified concerning this meeting.

[41] *Reliance Electric Company, Madison Plant Mechanical Drives Division*, 191 NLRB 44, 46 (1971); *Raley's Inc.*, 236 NLRB 971 (1978); *Arrow Molded Plastics, Inc.*, 243 NLRB 1211 (1979).

[42] *K & K Gourmet Meats, Inc.*, 245 NLRB 1331 (1979); *Rexair, Inc.*, 243 NLRB 876 (1979); *C. Markus Hardware, Inc.*, 243 NLRB 903 (1979); *Arrow Molded, supra; Raley's, supra.*

[43] See *Reliance, supra*, and *Sourdough Sales, Inc. d/b/a Kut Rate Kid and Shop Kwik*, 246 NLRB 106 (1979).

[44] See *McMullen Corporation, d/b/a Briarwood Hilton*, 222 NLRB 986 (1976).

[45] Note that in *McMullen, supra*, a similar action of an employer, of merely arranging for an insurance representative to explain existing benefits to employees, was relied upon by the Board in finding an unlawful solicitation of grievances.

[46] *Jorgensen's Inn*, 227 NLRB 1500 (1977); *House of Mosaics, Inc., subsidiary of Thomas Industries, Inc.*, 215 NLRB 704 (1974).

Additionally, Fink announced an open door policy for the discussion of employees' problems, and added that he "didn't want a third party to come between us." Such comments have been found to be in direct contradiction to a true "no promises" position.[47]

Moreover, at the meeting Hiller instructed the employees that, if they have any grievances, to write everything on a piece of paper. At the end of the meeting Fink accepted the written lists prepared by D'Onofrio, as well as the list from Benzola, after being told the lists were what the employees wanted. Fink again repeated that he would look into the requests included therein, along with again repeating his "no promises" comments. This conduct in my mind reinforces the conclusion which I make that Respondent by its conduct at the meeting has held out the prospect to its employees that their complaints would be remedied without the intervention of the Union. The Board's observations in *Raley's, supra*, are equally applicable to the facts herein:

> Were we to conclude that Respondent, by merely reciting a "no promises" formula, had clearly discharged its duty to avoid giving the employees the impression that their complaints would be remedied, we would be forced to conclude that the parties at these meetings were engaged in a largely meaningless exchange concerning the employees' grievances and complaints. However, it is apparent that the reason for voicing such complaints was the hope that they might be remedied. Clearly, as reflected in the Administrative Law Judge's Decision, the adamancy with which the employees continued to express their grievances and Respondent continued to entertain them, despite such formalized disavowals by Respondent that any changes would ensue, sufficiently indicates that such disavowals were not tendered or taken at face value. Thus, we conclude that Respondent's oft-repeated stock phrase of "no promises" was a mere formality, serving only as an all-too-transparent gloss on what is otherwise a clearly implied promise of benefit.[48]

Accordingly, I find that Respondent has at the April 11 meeting solicited grievances and impliedly promised benefits in violation of Section 8(a)(1) of the Act.[49]

With respect to Respondent's May 9 meeting with some of its employees, the General Counsel amended the complaint at the hearing to allege that Respondent, by Ann Mileto, its supervisor and agent, urged, requested, and solicited its employees to sign a petition for a meeting with David Fink, in order to induce said employees to state their grievances and complaints to Respondent, and to abandon their membership in, support for, and activities on behalf of the Charging Party. The General Counsel also contends that Respondent's decision to agree to meet with the employees is also violative of the Act, as a solicitation of grievances, although he concedes that no promises of benefit, express or implied, were made at such meeting.

The General Counsel urges that Mileto be found to be a supervisor on the basis of her alleged responsibility to assign and check work to see that work is done efficiently and correctly. However, the record reveals that her authority to assign work is limited to the passing on of instructions to employees from higher supervisors. As to her allegedly being held accountable for work in her area, the record reflects that once or twice a week she is asked, by Cianflone, how the employees in her area were doing as a group. Cianflone has not asked nor did Mileto advise him or any other official of Respondent as to the work performance of any specific employee. The record reveals no evidence of Mileto ever affecting the employment status of any employee. Mileto spends her time working along with and performing work similar to other unit employees and she punches a timeclock as do other unit employees.

Accordingly, I find that the record fails to establish that Mileto exercised a degree of independent judgment in regard to directing or evaluating employees sufficient to establish that she is a supervisor within the meaning of the Act.[50]

Having found that Mileto was not a supervisor within the meaning of the Act, her activities in connection with instigating the May 9 meeting and distributing the petition cannot be attributed to Respondent, and I shall therefore recommend dismissal insofar as it alleges their conduct to be unlawful.

An argument can be made that, even if Mileto is not a supervisor, when Fink directed her to prepare a petition stating the employees wish to meet with him, and she complied, she became his agent for this purpose. However, even accepting this conclusion would not alter my finding that the Act has not been violated by the petition being solicited. When Mileto informed Fink of the employees' desire for the meeting, she did not tell him the purpose or the reasons why the employees wanted to meet with him. It is true that Fink probably inferred that the Union might come up or be one of the topics discussed. However, I do not find that Fink was aware of or could reasonably have believed that the employees wished to ask him to grant them benefits in exchange for their abandonment of the Union. Therefore since he was not so aware, his direction to Mileto to solicit a petition from employees requesting a meeting cannot be construed as a direction to prepare a petition soliciting employees to abandon the Union. To the contrary, I find that Fink having been served with ULP charges attacking his holding of the April meeting was merely being careful to insure that there would be no doubt that his meeting with employees was at their request. I therefore

[47] *Raley's, supra; K & K Gourmet Meats, supra.*

[48] 236 NLRB at 972.

[49] Respondent also relies on the fact that meeting was not called by Respondent, but was sought by the employees, and that Fink stated to employees that he was not in a position to ask them what was wrong. These factors do not exonerate Respondent from its actions. Regardless of the fact that the idea originated with employees or that Fink originally said that he could not ask what is wrong, it is clear that Respondent throughout the meeting did in fact invite employees to express their grievances and impliedly promised to take steps to remedy them in the midst of a union drive where there is no evidence of similar solicitude in the past. *Jorgensen's Inn, supra; McMullen, supra.*

[50] *Unimedia Corporation*, 235 NLRB 1561 (1978).

find that Fink's direction to Mileto to obtain such a petition did not violate the Act.

Since I have found above that Fink was unaware of the purpose of the meeting, I do not find that Respondent, by agreeing to meet with the employees at their request, has violated Section 8(a)(1) of the Act. Although at the meeting the employees requested that he grant them benefits, and offered to abandon the Union if he agreed to do so, Fink did not accept the employees' offer and merely responded that his hands were tied. Although Fink did listen to the employees' complaints, he made no promises either express or implied to remedy them. In fact the General Counsel concedes that no such promises were made. Since *Uarco, supra*, establishss that a respondent does not violate the Act by merely listening to employees' complaints, without implying that such complaints will be redressed, I further conclude that Respondent has not transgressed the statute by either agreeing to meet with its employees or by its conduct during the course of the meeting. Thus, I shall recommend dismissal of the allegations in the complaint pertaining to the May 9 meeting.

B. *The Layoffs of Benzola and Roberts*

The evidence establishes that Benzola and Roberts, both card signers, were the two principal union adherents in the organizing activity at Respondent's shop. Thus, Benzola attempted to solicit authorization cards from a number of employees, including the technicians and D'Onofrio who were not union supporters, and collected the signed authorization cards from employees, including the cards of Mildred and Al Reph from Mildred; conducting all of these activities inside the plant. Roberts solicited and obtained an authorization card from one employee, and spoke in favor of the Union to other employees inside the plant, as well as inside his car. In addition, Roberts was seen by Respondent's officials receiving a blank authorization card from union officials, and Benzola was seen talking to union officials by Respondent immediately after the April 11 meeting.

In addition, at the April 11 meeting, Benzola read off the list of grievances formulated by the employees, as well as discussing some of these demands with Fink. Roberts also spoke up at the meeting and requested that a list of holidays be posted, which Respondent agreed to and did post on April 14.

Respondent argues that since other employees in addition to Benzola and Roberts signed cards, other employees spoke with union agents in the parking lot, and other employees spoke up at the April 11 meeting, the General Counsel has failed to establish that Benzola or Roberts engaged in union activity that Respondent was aware of or singled them out of a crowd of employees who engaged in similar conduct. I do not agree.

As noted, Roberts and Benzola were the only employees, at least insofar as this record discloses, who solicited other employees in the shop to sign cards and to support the Union. The employees solicited included some who were against the Union. In these circumstances, considering the small size of the shop, the employees' outspokenness in the shop in favor of the Union, as well as the timing of the layoffs in relation to the activity engaged in by Benzola and Roberts, I find that an inference is warranted that Respondent was aware that Benzola and Roberts were the primary union adherents at the shop.[51]

In addition, even apart from any inferences of knowledge of union activity that may be derived from the above facts, Fink admitted that, immediately upon receiving the demand telegram from the Union, he prepared a list of which of his employees he suspected had signed union cards. He further admitted that he listed Benzola and Roberts as employees who he believed had signed union cards. Thus, since it is well settled that a discharge because an employer suspects or believes that an employee engaged in union activities is violative of the Act,[52] Fink's admission establishes in and of itself the requisite knowledge or suspected knowledge of Benzola's and Roberts' union activity.

Respondent also argues that no animus or hostility has been shown by Respondent toward Roberts or Benzola for their union activities and/or for their participation during the April 11 meeting. While it is not essential for the finding of a violation, that such animus or hostility be established, I do not concur with Respondent's conclusions in this regard that such hostility has not been shown.

First, as I have found above, Respondent's reaction the day after the receipt of the Union's telegraphic demand was to conduct a meeting with its employees and unlawfully solicit grievances and impliedly promise to remedy the complaints of its employees, if they abandon the Union. This action is demonstrative of hostility and animus towards the employees' organizational efforts.

Secondly, Fink admitted in his testimony that he felt that the grievances presented by Benzola[53] at the April meeting were "pie in the sky" and "totally unreasonable," and referred to Benzola as a "$3.50 per hour employee," who in Fink's view had merely "opened a book, and first wrote down the benefits." Fink also characterized himself as being "speechless" from hearing the benefits proposed by Benzola. Thus, it is clear from the above that Fink was quite perturbed that new employees such as Benzola or Roberts, making $3.50 per hour, would have the temerity to suggest that Fink grant to its employees what he (Fink) considered to be such outlandish and unreasonable benefits to his employees.[54]

Based on the foregoing, I conclude that the General Counsel has made a *prima facie* showing that the union activities of Roberts and Benzola were motivating factors

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[51] *Florida Cities Water Company*, 247 NLRB 755 (1980); *Petroleum Electronics, Inc. and/or Cook Enterprises, Inc.*, 250 NLRB 265 (1980); *Tom's Ford, Incorporated*, 233 NLRB 23 (1977); *Tayko Industries, Inc.*, 214 NLRB 84, 88 (1974).

[52] *Suburban Chevrolet, Inc.*, 254 NLRB 228 (1981); *Crucible, Inc., Division of Colt Industries, Inc.*, 228 NLRB 723 (1977); *Riverfront Restaurant, supra.*

[53] As opposed to the other list of grievances presented at the meeting by D'Onofrio.

[54] Fink's suspecting that Roberts and Benzola were union adherents, because of their relatively brief tenure with Respondent, and his annoyance at these $3.50-per-hour employees requesting such benefits at the meeting, further establishes a probable connection in Fink's mind between their union activity and their speaking up at the April meeting, and presenting such grievances to him.

in Respondent's decision to lay them off. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

I find further that Respondent has fallen short of demonstrating that it would have taken the same action against Roberts or Benzola in the absence of their engaging in such union activity. Fink's explanation that they were laid off because of lack of work simply does not withstand scrutiny.

While it is undisputed that late March and early April are generally slow periods for work performed for Respondent, by employees such as Roberts and Benzola, I do not credit Fink's testimony that, at the time of the layoffs, there was nothing to do for these employees, other than "make work" tasks. I credit Benzola and Roberts, corroborated by Respondent's own witness D'Onofrio, that shortly before the layoffs from 4 p.m. on[55] there was little or no work for them to do, and, during this period of time only, Respondent had to find "make work" jobs for them to perform.

Although I have found, as noted, that in April work was slower than it had previously been for Benzola and Roberts, I also have found, as admitted by Fink, that work was no slower in April 1980 than in prior years at that time, and that Respondent had never laid off any employees in prior years. Fink attempted to explain this seeming inconsistency, by asserting that in prior years he did not have to lay off any employees due to the substantial turnover in these positions. Although other employees testified that turnover was common in these jobs, and records were introduced to establish that five employees hired for these positions between October 1979 and February 1980 left after relatively short periods of time, nowhere does the record reveal either by testimony or from records the number of employees employed by Respondent in these or any other positions during the "slow" March-April periods in prior years, when Respondent did not find it necessary to lay off anyone. Thus, Respondent has not met its burden of justifying its unprecedented decision to lay off the two prime union supporters, within a week of the Union's demand for recognition.

I also do not credit Fink's testimony that he had decided on April 7 to lay off Benzola and Roberts as of April 11, before receipt of the Union's demand, and only changed his mind and decided to defer the layoff, because of the receipt of such demand and his attorney's alleged advice not to lay off at that time. Fink testified that he told Cianflone on April 7 to lay them off on April 11, but then rescinded that order on April 10, in view of the demand. However, Cianflone was not called as a witness to corroborate Fink as to these discussions, and no explanation was offered for Respondent's failure to do so. These circumstances permit me to draw an adverse inference, which I do, that, had he been called, his testimony would not have been favorable to Respondent's cause.[56] Fink further testified that he usually terminates employees on Fridays since they pick up their checks at that time. Yet he decided to lay off Benzola and Roberts on Tuesday, April 15, in the middle of the week.

Respondent's defense is further weakened by examining the events occurring after the layoff. Thus, it was necessary after the layoffs for Supervisor Carrington to perform some of the work previously performed by Benzola and Roberts. Fink's testimony that work was so slow subsequent to the layoff that it was not necessary to hire a new worker, even after employee DeStefano left 2 weeks later, is contradicted by Respondent's own records. Thus, the records reveal that DeStefano was employed continuously by Respondent until July 1980, thereby further undermining Fink's credibility in attempting to justify Respondent's conduct.

Respondent also argues that its actions in attempting to recall Benzola, and actually recalling Roberts, on May 29 and June 4, respectively, demonstrates that Respondent was in fact motivated by economic considerations in initially deciding to lay them off. Once again, Respondent's own payroll records refute Fink's testimony in this regard, and belie Respondent's argument that its decision to recall these employees supports its assertions that their layoffs were motivated by economic factors. Thus, Fink testified that his decision to recall Benzola and Roberts was caused by the prolonged absence of of Al Reph, and the alleged necessity for Roberts and Benzola to perform work ordinarily done by Reph.[57] However, Respondent's records reveal that Al Reph was out of work for Respondent from April 11 (4 days prior to the layoffs of Benzola and Roberts) until July 11. Therefore Reph's absence can hardly be considered a rational explanation for the decision to recall Benzola and Roberts, starting on May 29. A more reasonable explanation for the "sudden" decision to recall them appears to me to be the filing of the instant charges and the imminency of the issuance of the instant complaint, and Respondent's desire to reduce backpay liability herein.

I find therefore, based on the foregoing, that Respondent has failed to demonstrate that it would have taken the same action against Benzola and Roberts in the absence of their engaging in union activities. *Wright Line, supra.*

Accordingly, Respondent by laying off Roberts and Benzola on April 15, 1980, has violated Section 8(a)(1) and (3) of the Act.

[55] The last hour of their workday.

[56] *English Brothers Pattern and Foundry*, 253 NLRB 530 (1980); *Trinity Memorial Hospital of Cudahy, Inc.*, 238 NLRB 809 (1978).

[57] This explanation also is somewhat inconsistent with Fink's explanation of his initial decision to lay off Benzola and Roberts. Fink contended that, since they were primarily performing tasks dealing with defective merchandise, and April was the slow season for such merchandise, their layoffs were thereby mandated by the lack of available work for them to perform. Yet, May and June were still slow months for defective merchandise, and the work they were called back to perform was admittedly related to new merchandise which work was not diminished in April. In fact, Fink testified that April is the start of the busy season for such new merchandise.

C. *Respondent's Alleged Obligation To Bargain With the Union*

1. Appropriate unit

The complaint, as amended at the hearing, alleges a unit consisting of all production, maintenance, shipping and receiving employees and warehousemen employed by Respondent at its Melville plant, exclusive of office clerical employees, technicians, guards, foreman and all supervisors as defined in the Act, to be appropriate.

Respondent denies the appropriateness of said unit, claiming that the technicians should be included in any unit found appropriate herein. Respondent contends that the evidence establishes that the technicians are but one segment of a functionally integrated group of employees performing interrelated tasks, and that any appropriate unit must include these employees.[58]

The record does contain some evidence tending to support the appropriateness of a unit including the technicians. Thus, the flow of part of Respondent's product, i.e., the defective merchandise through the repair department from unpacking to shipping, does tend to show an integral part played by the technicians in Respondent's operation, at least as to its handling of defective items, which encompasses a majority of the employees in the unit sought. Moreover, there is common supervision of the technicians and other warehouse employees, and some day-to-day contact between said warehouse employees and the technicians.

However, it is well settled that a unit need not be the "only" appropriate unit, or even the "most" appropriate unit. The Act only requires that a unit be "an" appropriate unit in order to support a bargaining order,[59] or to hold an election.[60]

I find that the record establishes that Respondent's warehouse employees share a sufficiently distinct and separate community of interest from the technicians to warrant the conclusion that a unit limited to said warehouse employees is appropriate.[61]

Thus, the technicians spend all of their worktime in a physically separate room, performing distinctly different job functions and using different skills from the other employees in the warehouse.[62] The day-to-day contact between the technicians and the warehouse employees is limited to "the routine movement of merchandise within the facility."[63] In this connection, I also note that the technicians work alongside, and perform the same work as, three individuals employed by customers of Respondent.

Additionally, there is no evidence of any permanent or temporary transfers between technicians and warehouse employees, while both types of such transfers have occurred among the other warehouse employees and job functions.

Moreover, Respondent's warehouse employees are hourly paid and punch a timeclock. The technicians do not punch a clock, and are paid a daily salary, on a scale substantially in excess of the average salary of the warehouse employees.

Accordingly, based on the factors and cases cited above, I find that a unit consisting of Respondent's warehouse employees, excluding the technicians, is an appropriate unit for collective bargaining.[64]

2. Majority status

The record establishes that Respondent employed 15 employees in the bargaining unit which I have found to be appropriate, as of the date of the Union's demand for recognition.[65]

The General Counsel introduced into the record 10 single purpose authorization cards, purportedly signed by these 10 unit employees of Respondent. Respondent contends that a number of these cards were either not properly authenticated or should be otherwise invalidated for purposes of demonstrating the Union's majority status, because of various statements made by the solicitor.

Initially Respondent argues that all of the cards solicited by Jones should be invalidated, because of Jones' alleged "misrepresentation as to benefits the employees would receive solely because the Union came in." However, it is clear that an examination of Jones' comments reveals no promise of gifts or benefits to be granted by the Union, but merely an explanation of what Jones felt would occur if the plant became unionized and if a contract were signed with the Employer. Thus, the Union was engaging in commonplace election propaganda, and the cards solicited by Jones were not invalidated by such comments.[66]

Respondent also contends that the cards of Roberts and Curley should be invalidated, by virtue of Jones' statements to them, which Respondent argues amounts to a misrepresentation that the cards would be used for an election. I find Respondent's position to be without merit. The evidence is clear that both Curley and Roberts expressed an interest in executing the cards and in joining the Union, read the cards and signed and filled out said cards, before any statements were made to them by Jones about the cards being used for an election. Accordingly, since the cards were signed before any alleged misrepresentation was made and the employees clearly expressed interest in the Union prior to Jones' comments about the election, these remarks cannot be said to have invalidated their cards.[67] The totality of the circum-

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[58] *Mack Trucks, Inc.*, 214 NLRB 382 (1974); *Dynalectron Corporation*, 231 NLRB 1147 (1977); *The Sheffield Corporation*, 134 NLRB 1101 (1961).

[59] *Gerald G. Gogin d/b/a Gogin Trucking*, 229 NLRB 529 (1977).

[60] *Sears, Roebuck and Co.*, 250 NLRB 658 (1980).

[61] *Sears, Roebuck and Co., supra; Montgomery Ward & Co., Incorporated*, 230 NLRB 366 (1977); *Sears, Roebuck and Co.*, 235 NLRB 678 (1978).

[62] *Montgomery Ward, supra.*

[63] *Montgomery Ward, supra; Sears, Roebuck, supra.*

[64] In making this finding, I do not rely upon, as argued by the General Counsel, the fact that the technicians were not present at the April 11 meeting held by Respondent. The record did not establish whether or not the technicians were invited to attend, or what reasons caused them not to be there. I therefore do not believe that their absence from the meeting demonstrates anything with respect to the lack of community of interest with the warehouse employees, as contended by the General Counsel.

[65] As noted above, I have concluded that the General Counsel has not established the supervisory status of Ann Mileto. Thus, she is includible as an employee in computing the number of unit employees.

[66] *Jimmy-Richard Co., Inc.*, 210 NLRB 802 (1974); *Federal Alarm*, 230 NLRB 518 (1977).

[67] *Essex Wire Corporation*, 188 NLRB 397, 415, 416 (1971).

stances herein does not indicate that Jones' statements negated the clear and unambiguous statements on the cards that the signers authorize the Union to represent them. Jones did not direct the employees to disregard the clear language on the cards, nor did he assure them that the cards would be used for no purpose other than to get an election. Thus, the cards of Roberts and Curley are valid designations of the Union as collective-bargaining representative.[68]

The only other card contested by Respondent is the authorization card allegedly signed by Al Reph, Jr. It is not essential that I decide the authenticity of this card, in view of my conclusions set forth above that the remaining cards secured by the Union are valid. These cards which total 9 constitutes a clear majority of the 15 employees in the unit which I have found to be appropriate. However, if either the Board or the courts were to reverse my findings as to the appropriateness of the unit alleged in the complaint, and find that an appropriate unit must include the technicians, this would result in 18 employees included in the appropriate unit. In that event, the card of Al Reph, Jr., will be determinative of the Union's majority status herein. In these circumstances, I deem it appropriate to consider the issue of the authenticity of Al Reph's card.

The facts, as set forth above, reveal that Jones, after giving an authorization card to Mildred Reph, was asked by Mildred for another card for her son Al to sign, who was then out sick. Subsequently, employee Benzola received from Mildred Reph her card, as well as the card purportedly signed by her son, at which time she told Benzola that Al had in fact signed his card. As noted, neither Al nor Mildred was called as a witness by either party, nor were W–4 forms or any other evidence of Reph's signature introduced into the record.

Respondent does not dispute the fact, as well it should not, that although Mildred Reph was not called as a witness her card was properly authenticated.[69]

One rationale for permitting authentication of cards by the testimony of a witness who did not observe the card being signed appears to be that the signer, by returning the signed card to the recipient, has thereby acknowledged or adopted any writing thereon as his own.[70]

This rationale would not seem to apply to the instant case, since the recipient of the card (Benzola) could not testify that he received the card from Al Reph. Therefore, to permit an inference that Reph adopted his card in those circumstances would seem highly dubious. However, the Board has permitted *prima facie* authorization of cards in circumstances which could be considered less inherently reliable than in the instant case. In *Irving Taitel, Ruth Taitel and Jerome Taitel, d/b/a I. Taitel and Son, a partnership*, 119 NLRB 910 (1957), the Board concluded that the General Counsel had sufficiently authenticated authorization cards by testimony that cards were returned to the Union by "key" employees who had distributed and/ or secured the cards from employees at the plant during the course of the union campaign. The Board reasoned that respondent had ample opportunity to check the authenticity of the signatures and failed to do so. Thus, the Board appeared in *Taitel* to create a presumption of regularity from testimony that the cards were received during the regular course of a union campaign, sufficient to shift the burden to respondent to refute the cards' authenticity.

The Board has not overruled *Taitel*, but subsequent cases indicate that such a broad presumption will not be applied. Thus in *Henry Colder Company*[71] and *John S. Barnes Corporation*,[72] the Administrative Law Judges,[73] based on *Taitel*, found that cards were sufficiently authenticated by testimony that cards of employees were received by the Union from certain key employees and or in the mail, thereby creating a burden upon respondent to go forward and refute the authenticity of these cards. The Board remanded both cases to the respective Administrative Law Judges for additional testimony on the authenticity of these cards, ruling implicitly in *Barnes* and explicitly in *Colder* that the Administrative Law Judges erroneously ruled that these cards were properly authenticated.

The Board has approved the rationale of *Taitel* where, in addition to testimony by a business agent that a card allegedly signed by one employee was given to the agent by another employee, the Administrative Law Judge had also examined W–4 forms. *L. C. C. Resort, Inc., d/b/a Laurels Hotel and Country Club*, 170 NLRB 1140 (1968).

In other cases, *Taitel* was cited approvingly by Administrative Law Judges on similar facts, but were reversed by the Board on the merits of the 8(a)(5) charges, without any discussion of the Administrative Law Judges rulings on the authenticity of the authorization cards.[74]

In *Maximum Precision Metal Products, Inc.*, 236 NLRB 1417, 1424 (1978), the Board affirmed an Administrative Law Judge's finding that the General Counsel had not authenticated authorization cards by testimony of the business agent that he received three cards at a union meeting from an employee solicitor who allegedly solicited the cards elsewhere. The Administrative Law Judge found that it was the General Counsel's burden of authenticating cards by testimony of the solicitor, the signator, or by some extrinsic evidence, which he did not fulfill.

Thus it appears that the Board will require some additional or extrinsic evidence to support an inference or presumption of reliability, apart from the testimony of the recipient of the card that he or she received the card from an employee, who in turn allegedly received it from the alleged signer.

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[68] *Keystone Pretzel Bakery, Inc.*, 242 NLRB 492 (1979); *Hedstrom Company, a subsidiary of Brown Group, Inc.*, 223 NLRB 1409 (1976); *Federal Stainless Steel, Div. of Unarco Industries, Inc.*, 197 NLRB 489, 494 (1972); *Essex Wire, supra.*

[69] *McEwen Manufacturing Company*, 172 NLRB 990 (1968); *Don the Beachcomber*, 163 NLRB 275 (1967); *Howard-Cooper Corporation*, 117 NLRB 287 (1957).

[70] *McEwen Mfg. Co., supra; Lifetime Door Company*, 158 NLRB 13 (1966); *N.L.R.B.* v. *Howell Chevrolet Company*, 204 F.2d 79 (9th Cir. 1953).

[71] 163 NLRB 105 (1967).

[72] 180 NLRB 911 (1970).

[73] Trial Examiners at that time.

[74] *South Station Liquor Store, Inc. d/b/a Berenson Liquor Mart*, 223 NLRB 1115 (1976); *Roman Cleanser Company*, 188 NLRB 931 (1971).

In my judgment, such additional evidence is present in the instant case, sufficient to create such a presumption, and place a burden upon Respondent to refute the authenticity of Al Reph's card. Since the record establishes that Al Reph is Mildred Reph's son, and that she asked for a card for him, and told Benzola, when she handed him (Benzola) the card, that her son had in fact signed the card, I find that these circumstances create a presumption of reliability and validity of Al Reph's authorization card. *Sandy's Stores, Inc.*, 163 NLRB 728, 745 (card of David Newell) (1967).[75]

Since Respondent presented neither Mildred nor Al Reph as a witness to deny that Al had signed an authorization card for Respondent, or introduced any records of signature or any other evidence tending to rebut the authenticity of his card,[76] I find that Al Reph's card can be counted in determining the Union's majority status.

Having concluded that Al Reph's card can be counted toward establishing the Union's majority, I find that Union has been designated by 10 employees employed by Respondent at the time of the demand. Therefore even if Respondent were to prevail on its unit contentions, the Union would still have attained majority status in a unit of 18 employees, inclusive of technicians.

3. The bargaining obligation

Having found that the Union represented a majority of Respondent's employees in an appropriate unit, it then becomes necessary to ascertain whether Respondent's unfair labor practices were sufficiently widespread and serious under *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575 (1969), to warrant issuing a bargaining order. The termination by Respondent of two leading union adherents is "conduct that the Board and the courts have long classified as misconduct going 'to the very heart of the Act.'" *Faith Garment Company, Division of Dunhall Pharmaceutical, Inc.*, 246 NLRB 299 (1979), enfd. 630 F.2d 630 (8th Cir. 1980).

The Board has also found the discriminatory discharges of two employees in a bargaining unit of 62 employees, without any other 8(a)(1) conduct, sufficient to justify a bargaining order.[77]

In the instant case, Respondent has unlawfully laid off 2 employees in a relatively small employee complement of 15 to 18 employees. See *El Rancho Market*, 235 NLRB 468 (1978).

In addition as noted above, Respondent violated Section 8(a)(1) of the Act by soliciting employee grievances and promising employees benefits the day after receiving the Union's demand. Although as noted, Respondent did recall and or offer to recall both employees, some 6 to 7 weeks after the unlawful layoffs, this does not remove the coercive effect of Respondent's action. See *Faith Garment, supra.*

In *Zim Textile Corp.*, 218 NLRB 269 (1975), an employer reinstated two employees, who had been unlawfully discharged, the next day without any loss of pay.[78] Respondent argued that the discharges did not stand in the way of a free election because of such reinstatement. The Board disposed of this contention as follows:

> However, as we have held, the effect of such discharges is not so easily eradicated. *Vernon Devices, Inc.*, 215 NLRB 475 (1974). An employer's demonstrated willingness to employ extreme measures to defeat a union cannot help but have a lasting and telling effect. Employees will certainly understand and remember the harsh treatment visited on them as a result of asserting their rights and may draw back from again asserting those rights. A free and fair election in these circumstances is unlikely. [*Id.* at 270.]

I therefore find that a bargaining order is justified herein, because Respondent's unfair labor practices had a "tendency to undermine majority strength and impede the election process."[79]

Thus, Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union as the exclusive representative of its employees in the unit found appropriate herein, and I so find.

In the event that my unit findings, as set forth above, are reversed, no 8(a)(5) violation would be appropriate. However, the case would then be treated as if no demand had been made, and a bargaining order would then be possible to remedy the 8(a)(1) and (3) violations found herein. See *Grandee Beer Distributors, Inc.*, 247 NLRB 1280 (1980).

Since I have found that the Union represented a majority of Respondent's employees in the unit alleged by Respondent to be the only appropriate unit (to wit, a unit including technicians), I would alternatively order Respondent to bargain with the Union in such unit, should it be held that the unit alleged by the General Counsel is inappropriate.

Upon the foregoing findings of fact, and upon the entire record herein and pursuant to Section 10(b) of the Act, I make the following:

CONCLUSIONS OF LAW

1. Respondent is and at all times herein has been an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

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[75] The Administrative Law Judge in *Sandy Stores, supra*, affirmed by the Board, found such a presumption to exist in the case of a husband's card returned to the union by his wife. I find no significant difference between a husband and wife and a mother and son, in applying such a presumption of validity or reliability.

[76] I note in this connection that both Mildred and Al Reph were employed by Respndent at the time of the hearing. Moreover, in Fink's own testimony he admitted that, when he received the Union's demand, he listed which employees he believed were supporters of and had signed cards for the Union. Fink listed both Mildred and Al Reph as having signed such cards. It is reasonable to believe that Fink's suspicions, especially in a small shop, had some basis, and is further evidence in my judgment bearing on the reliability of Al Reph's card, as an authentic designation of the Union as his representation for collective bargaining.

[77] *IDAK Convalescent Center of Fall River, Inc. d/b/a Crawford House*, 238 NLRB 410 (1978).

[78] Note that in the instant case no backpay was granted to Roberts or Benzola and they were laid off for 6 or 7 weeks.

[79] *Gissel, supra* at 613–614; *Highland Plastics, Inc.*, 256 NLRB 146 (1981).

3. Respondent on April 11, 1980, by soliciting grievances from its employees and promising to remedy them in order to induce employees to refrain from supporting the Union, has violated Section 8(a)(1) of the Act.

4. Respondent, by laying off its employees Joseph Benzola and Jack Roberts on April 15, 1980, has discriminated against them in order to discourage membership in the Union, in violation of Section 8(a)(1) and (3) of the Act.

5. All production, maintenance, shipping and receiving employees and warehousemen, employed by Respondent at its Melville, New York, location, exclusive of office clerical employees, technicians, guards and supervisors as defined in Section 2(11) of the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

6. Respondent, by refusing, since April 11, 1980, to recognize and bargain with the Union as the exclusive representative of its employees in the unit described above, has violated Section 8(a)(1) and (5) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent has not violated the Act by its conduct in meeting with its employees on May 9, 1980.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily laid off Roberts and Benzola, I shall recommend that Respondent make them whole for the losses sustained by reason of the discrimination against them.

In the case of Benzola, the backpay period shall run from April 15, the date of his layoff, to June 4, the date on which he was scheduled to be recalled by virtue of Respondent's letter.

In the case of Roberts, his backpay period shall run from April 15, the date of his layoff, to June 9, the date when he commenced working upon his recall by Respondent.

Backpay due the discriminatees herein shall be computed in accordance with *F. W. Woolworth Company*, 90 NLRB 239 (1950), and shall include interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

It will also be recommended that, upon request, Respondent recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate herein, and to embody any understanding reached into a signed agreement.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[80]

The Respondent, Windsor Industries, Inc., Melville, New York, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Conducting meetings with its employees for the purpose of hearing and adjusting employee grievances or complaints and explicitly or impliedly promising them economic benefits or improved working conditions in order to interfere with their choice of a bargaining representative, or as an inducement to reject and refrain from activities in support of National Organization of Industrial Trade Unions, herein called the Union, or any other labor organization.

(b) Discouraging membership in the Union, or any other labor organization, by discharging, laying off, or otherwise discriminating against employees in any manner in regard to their hire or tenure of employment, because of their union activities or sympathies.

(c) Refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of the following unit which is appropriate for such purposes:

> All production, maintenance, shipping and receiving employees, and warehousemen employed by Respondent at its Melville, New York location, exclusive of office clerical employees, technicians, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Make whole Joseph Benzola and Jack Roberts for any loss of pay they may have suffered by reason of the discrimination against them, in the manner set forth in the section of this Decision entitled "The Remedy."

(b) On request, bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed written agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful to the analysis of the amount of backpay due under the terms of this Order.

(d) Post at its place of business in Melville, New York, copies of the attached notice marked "Appendix."[81]

[80] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[81] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representative, shall be posted by it, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all parties had the opportunity to present their evidence, it has been decided that we violated the law in certain respects. We have been ordered to post this notice. We intend to carry out the Order of the Board and abide by the following:

WE WILL NOT conduct meetings with our employees for the purpose of hearing and adjusting their grievances or complaints and explicitly or impliedly promise them economic benefits or improved working conditions in order to interfere with their choice of a bargaining representative, or as an inducement to reject or refrain from activities in support of National Organization of Industrial Trade Unions, herein called the Union, or any other labor organization.

WE WILL NOT discourage membership in the Union, or any other labor organization, by discharging, laying off, or otherwise discriminating against our employees in any manner in regard to their hire or tenure of employment, because of their union activities or sympathies.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of the following unit which is appropriate for such purposes:

All production, maintenance, shipping and receiving employees, and warehousemen employed by us at our Melville, New York location, exclusive of office clerical employees, technicians, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them under the National Labor Relations Act, as amended.

WE WILL make whole Joseph Benzola and Jack Roberts for any loss of pay they may have suffered by reason of our discrimination against them, plus interest.

WE WILL, on request, bargain with the Union as the exclusive bargaining representative of the employees in the appropriate unit with respect to wages, rates of pay, hours of employment, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed written agreement.

WINDSOR INDUSTRIES, INC.